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3 UNITED STATES DISTRICT COURT
4 WESTERN DISTRICT OF WASHINGTON
5 AT SEATTLE

6 HENRY TANAYA SIA, et al.,

7 Plaintiffs,

8 v.

9 AIRASIA BERHAD, et al.,

10 Defendants.

C16-1692 TSZ

ORDER

11 THIS MATTER comes before the Court on defendant Artus S.A.S's ("Artus"),
12 and defendant AirAsia Berhad's (collectively "defendants"), motions to dismiss for lack
13 of personal jurisdiction, docket nos. 50, 58. Having reviewed the motions and all
14 relevant filings, the Court enters the following Order.¹

15 **Background**

16 This case arises from the tragic December 28, 2014, crash of an Airbus A320
17 airplane operating as AirAsia Flight 8501 ("Flight 8501"). Complaint, docket no. 1,
18 Common Allegations of Fact ¶ 6. In the early morning on December 28, Flight 8501

19 ¹ Plaintiffs filed no opposition to defendant Artus's motion. Pursuant to LCR 7(b)(2) "[i]f a party fails to
20 file papers in opposition to a motion, such failure may be considered by the Court as an admission that the
21 motion has merit." Local Civil Rule 7(b)(2). The Court considers plaintiffs' failure to respond to Artus's
22 motion to be an admission that the motion has merit. With regard to AirAsia Berhad's motion, plaintiffs'
23 filed a response on April 19, 2017, well after the March 31, 2017, noting date. LCR 7(d)(3) requires that
"papers" in opposition to a motion to dismiss "be filed and served not later than the Monday before the
noting date." Local Civil Rule 7(d)(3). Plaintiffs' counsel should review Local Civil Rule 7(d) to ensure
that in the future, counsel are apprised of the deadlines for filing an opposition to another party's motion.
In any case, the Court separately addresses the merits of both defendants' motions as well as the single
argument raised in plaintiffs' late-filed response.

1 crashed into the Java Sea while carrying passengers from Indonesia to Singapore, killing
2 everyone on board. Complaint, Common Allegations of Fact at ¶¶ 6-7. None of the
3 passengers or crew were United States citizens. Decl. of Paul Devaux, docket no. 51,
4 ¶ 25.

5 Plaintiffs in this action are the children of passengers Soetikno Sia and Christien
6 Yuanita Jou and the Administrators of their estates. Complaint, Common Allegations of
7 Fact at ¶¶ 2-3. Plaintiffs filed this multi-defendant action in federal court pursuant to 28
8 U.S.C. § 1369, commonly known as the Multiparty, Multiforum Jurisdiction Act.
9 Complaint, Jurisdiction and Venue at ¶ 2.

10 **A. Defendant Artus**

11 Plaintiffs allege that the cause of the fatal crash was, in part, a defective Rudder
12 Travel Limiter Unit (“RTL”) manufactured, assembled, designed, and sold by Artus
13 and defendant Danaher Corporation “individually as principal-agent, and/or as a joint
14 enterprise.” Complaint, Count IV at ¶ 10-12. Artus is a legal entity organized under the
15 laws of France with its headquarters and principal place of business in Avrillè, France.
16 Devaux Decl. at ¶ 4. The allegedly defective RTL installed on Flight 8501 was
17 manufactured by Artus in France in May of 2008 and sold to Airbus in Toulouse, France
18 the same month. *Id.* at 19, 21-22.

19 Artus does not maintain offices or own or rent any real property, maintain bank
20 accounts, or hold any other type of asset in the United States. *Id.* at 8-9, 11. Artus does
21 not pay taxes or manufacture products in the United States nor is it authorized to do
22 business in the United States. *Id.* at 11-12, 14. All sales of Artus’s products are made in
23 France and only a small portion of Artus’s global sales revenue, approximately 10.8%, is

1 derived from products ultimately delivered to customers in the United States. *Id.* at 15.
2 Artus has no agent for service of process in the United States, and it has no ownership
3 interest in any United States-based company. *Id.* at 13-14.

4 **B. Defendant AirAsia**

5 Flight 8501 was operated by PT Indonesia AirAsia, a partially owned affiliate of
6 AirAsia Berhad. Decl. of Amir Faezal Zakaria, docket no. 60, ¶ 22. Plaintiffs allege that
7 AirAsia Berhad breached its duty of care to Soetikno Sia and Christien Yuanita Jou by
8 failing to adequately maintain, monitor, and repair the Airbus A320 aircraft operated by
9 its affiliate and/or to instruct PT Indonesia AirAsia to repair the “dangerous and unsafe”
10 condition of the airplane. Complaint, Count I at ¶ 14-15. PT Indonesia AirAsia is
11 organized under Indonesian law with its principal place of business in Indonesia. Zakaria
12 Decl. at ¶ 23. AirAsia Berhad is organized under Malaysian Law with its principal place
13 of business in Malaysia. *Id.* at ¶ 5. Neither AirAsia Berhad nor PT Indonesia AirAsia
14 operated flights to the United States during the time period relevant to this litigation. *Id.*
15 at ¶¶ 6, 25.

16 Like Artus, neither AirAsia Berhad nor PT Indonesia AirAsia have offices or own
17 property in the United States. *Id.* at ¶¶ 8, 12, 26-27. And neither airline has paid taxes, is
18 registered to do business, or has employees or a registered agent in the United States. *Id.*
19 at ¶¶ 9-12, 27, 29-31.

20 **Discussion**

21 **A. Legal Standard**

22 When a defendant invokes Federal Rule of Civil Procedure 12(b)(2) in a motion to
23 dismiss for lack of personal jurisdiction and the Court holds no evidentiary hearing, the

1 plaintiff need only make a prima facie showing of personal jurisdiction. *See Harris*
2 *Rutsky & Co. Ins. Servs., Inc. v. Bell & Clements Ltd.*, 328 F.3d 1122, 1128-29 (9th Cir.
3 2003). Though a plaintiff generally cannot rest on the bare allegations of its complaint,
4 uncontroverted allegations must be taken as true. *Mavrix Photo, Inc. v. Brand*
5 *Technologies, Inc.*, 647 F.3d 1218, 1223 (9th Cir. 2011) (citing *Schwarzenegger v. Fred*
6 *Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004)). The Court should resolve factual
7 disputes in the plaintiff's favor, but may not assume the truth of allegations in a pleading
8 which are contradicted by affidavit. *Id.*

9 **B. Analysis**

10 Where, as here, a federal statute confers nationwide service of process,² whether a
11 court may exercise personal jurisdiction depends upon whether the party has sufficient
12 contacts with the United States as a whole, rather than any particular state. *See Securities*
13 *Investor Protection Corp. v. Vigman*, 764 F.2d 1309, 1315-16 (9th Cir. 1985); *see also*
14 *Siswanto v. Airbus Americas, Inc.*, No. 15-CV-5486, 2016 WL 7178459, at *4 (N.D. Ill.
15 December 9, 2016).

16 The Due Process Clause of the United States Constitution prohibits the exercise of
17 personal jurisdiction over a non-resident defendant unless the defendant has sufficient
18 "minimum contacts" with the forum such that the exercise of jurisdiction would not
19 offend "traditional notions of fair play and substantial justice." *Int'l Shoe Co. v.*
20 *Washington*, 326 U.S. 310, 316, 320 (1945). Depending on the strength of those
21 contacts, courts recognize two types of personal jurisdiction: general and specific.

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23 ² AirAsia Berhad and Artus were served pursuant to 28 U.S.C. § 1697, which authorizes nationwide
service of process in cases brought under the Multiparty, Multiforum Jurisdiction Act, 28 U.S.C. § 1369.

1 *Bancroft & Masters, Inc. v. August Nat'l Inc.*, 223 F.3d 1082, 1086 (9th Cir. 2002). A
2 defendant with “substantial” or “continuous and systematic” contacts with the forum is
3 subject to general jurisdiction, and can be haled into court in any action, even one
4 unrelated to its contacts in the forum. *Id.* Specific jurisdiction on the other hand is
5 tethered to a relationship between the forum and the claim, and depends upon an
6 “affiliation between the forum and the underlying controversy.” *Goodyear Dunlop Tires*
7 *Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2851 (2011); *see also Holland Am. Line, Inc.*
8 *v. Warsila N. Am., Inc.*, 485 F.3d 450, 460 (9th Cir. 2007). Here, as discussed below,
9 plaintiffs have failed to make a *prima facie* showing sufficient to establish either general
10 or specific jurisdiction over defendants Artus and AirAsia Berhad.

11 **1. General Jurisdiction**

12 Outside of exceptional circumstances showing that a foreign corporation is
13 “essentially at home in the forum,” general jurisdiction over a corporation is limited to its
14 place of incorporation or principal place of business. *See Daimler AG v. Bauman*, 134 S.
15 Ct. 746, 761 n. 19 (2014). Artus and AirAsia Berhad are foreign entities with principal
16 places of business outside the United States and neither has sufficient contacts with the
17 United States to render them “essentially at home” here.³ *See Daimler*, 134 S. Ct. at 758

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19 ³ Plaintiffs’ allegations that “Artus S.A.S. was a wholly owned subsidiary of Defendant, Danaher
20 Corporation” and that Danaher Corporation and Artus “individually as principal-agent, and/or as a joint
21 enterprise” designed, manufactured, assembled and/or sold the allegedly defective RTLUs are insufficient
22 to impute Danaher’s jurisdictional contacts to Artus. In the context of “‘imputed’ general jurisdiction,”
23 the Ninth Circuit has held that a parent corporation’s jurisdictional contacts may be imputed to a
subsidiary only if the two entities are “alter ego[s].” *See Ranza v. Nike, Inc.*, 793 F.3d 1059, 1071-72 (9th
Cir. 2015). To satisfy the alter ego test, a plaintiff “must make out a *prima facie* case (1) that there is such
unity of interest and ownership that the separate personalities [of the two entities] no longer exist and (2)
that failure to disregard [their separate identities] would result in fraud or injustice.” *Id.* at 1072 (quoting
Doe v. Unocal Corp., 248 F.3d 915, 926 (9th Cir. 2001)). Plaintiff has not alleged facts sufficient to
satisfy either prong of the alter ego test.

1 n. 11; *see also* *Siswanto*, 2016 WL7178459, at *5-8. General jurisdiction calls for an
2 appraisal of a corporation’s activities in their entirety, nationwide and worldwide, and
3 any determination of whether a corporation’s contacts with a particular forum are
4 sufficiently “continuous and systematic” must be evaluated in that context. *See Daimler*,
5 134 S. Ct. at 761-62 & n. 20. A corporation “that operates in many places can scarcely
6 be deemed at home in all of them.” *Id.* at 762 n. 20.

7 Artus and AirAsia Berhad are organized under foreign law, conduct business
8 outside the United States, serve a primarily foreign constituency, and derive only a small
9 fraction of their global revenue from U.S. customers. The minimal contacts plaintiffs
10 allege Artus and AirAsia Berhad have with the United States are not so continuous and
11 systematic “that it would be fundamentally fair” to require them to answer “in *any*
12 litigation arising out of *any* transaction or occurrence taking place *anywhere* in the
13 world.” *See Siswanto*, 2016 WL 7178459, at *4 (emphasis in original) (quoting *Purdue*
14 *Research Foun. V. Sanofi-Synthelabo, S.A.*, 338 F.3d 773, 787 (7th Cir. 2003)); *see also*
15 *Schwarzenegger*, 374 F.3d 807 (holding that general jurisdiction must be premised on
16 “continuous and systematic general business contacts” that “approximate physical
17 presence” in the forum such that the Corporation can be sued there for any act it has
18 committed anywhere in the world). As in *Daimler*, an exercise of general jurisdiction
19 over either Artus or AirAsia Berhad “would scarcely permit [non-resident] defendants ‘to
20 structure their primary conduct with some minimum assurance as to where that conduct
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1 will and will not render them liable to suit.”⁴ *Daimler*, 134 S Ct. 746 (quoting *Burger*
2 *King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985)).

3 **2. Specific Jurisdiction**

4 Courts in the Ninth Circuit apply a three-part test to determine whether an alleged
5 tortfeasor has sufficient forum-related contacts for a Court to exercise specific
6 jurisdiction: (1) the non-resident defendant must purposefully direct his activities or
7 consummate some transaction with the forum or resident thereof; (2) the claim must arise
8 out of or relate to the defendant’s forum-related activities; and (3) the exercise of
9 jurisdiction must comport with fair play and substantial justice. *Picot v. Weston*, 780
10 F.3d 1206, 1211 (9th Cir. 2015) (quoting *Schwarzenegger v. Fred Martin Motor Co.*, 374
11 F.3d 797, 802 (9th Cir. 2004). A lawsuit “arises out of or relates to” a defendant’s
12 contacts with the forum state if “a direct nexus exists between those contacts and the
13 cause of action.” *In re Western States Wholesale Natural Gas Antitrust Litigation*, 715
14 F.3d 716, 742 (9th Cir. 2013). The plaintiff has the burden of proving the first two
15 prongs of the test. *Picot*, 780 F.3d at 1211. If the plaintiff fails to satisfy either of these
16 prongs, personal jurisdiction is not established in the forum. *Schwarzenegger*, 374 F.3d
17 at 802.

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20 ⁴ Plaintiffs’ late-filed response advances a single argument: that AirAsia Berhad is subject to general
21 jurisdiction because its website, *airasia.com*, through which AirAsia Berhad solicits customers and
22 accepts reservations and payments for tickets and ancillary services, is hosted on a server owned by
23 Akami Technologies Inc. in Seattle, Washington. District courts in this circuit, however, have squarely
rejected the argument that server location within the forum can constitute a basis for the exercise of
general jurisdiction. *See Pfister v. Selling Source, LLC*, 931 F. Supp. 2d 1109, 1115-16 (D. Nevada
2013); *see also Man-D-Tec, Inc. v. Nylube Products Co., LLC*, No. CV-11-1573-PHX-GMS, 2012 WL
1831521, at *2 (D. Ariz. May 18, 2012) (citing *Chang v. Virgin Mobile*, 2009 WL 111570, at *3 (N.D.
Tex. Jan. 16, 2009)).

1 **a. Defendant Artus**

2 With regard to Artus, plaintiffs cannot establish specific jurisdiction because their
3 claims do not arise out of or relate to any of Artus’s forum-related activity. Plaintiffs
4 allege that Artus is liable for their injuries because it “designed, manufactured, assembled
5 and/or sold” the RTLU that allegedly failed and resulted in the crash. None of this
6 activity, however, occurred in the United States or involved a transaction with a forum
7 resident. Artus designed, manufactured, and sold the allegedly defective RTLU to Airbus
8 S.A.S. (“Airbus”), a French entity, in France. Devaux Decl. at ¶ 18-19, 21. Plaintiffs’
9 allegations fail to establish any causal connection between any of Artus’s actual forum-
10 related contacts, such as products delivered to customers in the United States or its single
11 U.S.-based employee,⁵ and an aircraft accident involving an aircraft originating in
12 Indonesia and operated by a domestic Indonesian airline that crashed into Indonesian
13 waters.

14 **b. Defendant AirAsia Berhad**

15 As with Artus, plaintiffs cannot establish specific jurisdiction over AirAsia Berhad
16 because their claims do not arise out of or relate to forum-related activity undertaken by
17 AirAsia Berhad. The sole allegations concerning AirAsia’s jurisdictional contacts with
18 the United States provide that AirAsia Berhad (1) conducts business with Akamai
19 Technologies, Inc., including hosting of AirAsia Berhad’s website on a dedicated server
20 in Seattle, Washington; (2) engaged in a joint venture with Expedia, Inc. in Bellevue,
21 Washington; and (3) engaged in numerous other commercial transactions with companies

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23 ⁵ Artus’s United States based employee is a sales representative who works out of his home in Virginia.
Devaux Decl. at ¶ 16. This employee has no involvement with the sales of RTLUs. *Id.* at ¶ 19.

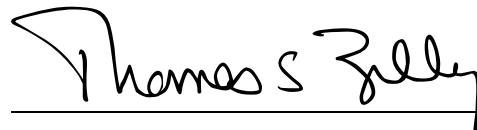
1 located within the State of Washington. Complaint, Count I at ¶ 9. But plaintiffs'
2 complaint draws no nexus between any of these activities and an alleged breach of
3 AirAsia Berhad's duty to maintain, repair, and supervise PT Indonesia AirAsia's
4 operation of an aircraft involved in a Crash occurring halfway around the world. Without
5 allegations connecting AirAsia Berhad's alleged negligence to its forum-related
6 activities, plaintiffs have failed to demonstrate the "direct nexus" required to support
7 specific jurisdiction over AirAsia Berhad. *See Faalele v. Sinapore Technologies Marine,*
8 *Ltd.*, No. 14-CV-2321-H (KSC), 2016 WL 6330585, at *7 n. 12 (S.D. Cal. Jan. 28, 2016)
9 (noting that contacts with a particular forum are irrelevant for the purposes of
10 determining specific jurisdiction absent a "direct nexus" between those contacts and the
11 cause of action at issue).

12 **Conclusion**

13 For the foregoing reasons, defendant Artus's and defendant AirAsia Berhad's
14 motions to dismiss for lack of personal jurisdiction, docket nos. 50, 58, are GRANTED
15 and plaintiffs' claims against defendant Artus and defendant AirAsia Berhad are
16 DISMISSED without prejudice.

17 IT IS SO ORDERED.

18 Dated this 20th day of April, 2017.

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21 Thomas S. Zilly
22 United States District Judge
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